

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1494/1dn

MES:...:kjf

June 29, 1999

Please review this amendment very carefully. The calculations, particularly the phase-down provisions, were very complicated. The amendment is also very unusual in that it creates a tax credit that is both refundable and nonrefundable, depending on the claimant's level of Wisconsin adjusted gross income. Consequently, you may wish to have the amendment reviewed by the fiscal bureau and the department of revenue.

Your instructions stated that "property taxes" and "rent constituting property taxes" should be based on the definitions in the school property tax rent credit (SPTC) and the homestead credit. However, the SPTC is based on property taxes accrued in the year to which the claim relates and the homestead credit is based on property taxes accrued in the year before the year to which the claim relates. This amendment is based on the SPTC; if you would like the amendment to be based on the homestead credit, please let me know.

This drafter's note is also meant to alert you to the possibility that the property tax refund credit created in this bill could be challenged as a violation of the uniformity clause of the Wisconsin Constitution, article VIII, section 1. Basically, the uniformity clause requires that the taxation of real property be uniform. The uniformity clause does not apply to income taxes. See *Gottlieb v. Milwaukee*, 33 Wis. 2d 408, 427-428 (1967). A 1974 amendment to the uniformity clause exempted agricultural land from the uniformity requirement.

The tax credit for residential property taxes that is created in this amendment, however, essentially provides a refund to some taxpayers based on their income and property taxes. Arguably, such a refund provides a partial exemption for the property taxes of some taxpayers. The Wisconsin Supreme Court has held that reducing the taxes on some property but not exempting the property is a partial exemption that violates the uniformity clause. See *Knowlton v. Supervisors of Rock County*, 9 Wis. 410 (1859), *Gottlieb and Ehrlich v. Racine*, 26 Wis. 2d 352 (1964). It could be argued that the economic effect of this credit is a reduction of property tax liability, which is a partial exemption, and that the credit therefore violates the uniformity clause.

A court could, however, decide that the credit created in this bill is a relief measure and not a tax provision. The uniformity clause does not apply to relief measures. It was on this basis that the Wisconsin Supreme Court held that the homestead tax credit was not a violation of the uniformity clause. See *Harvey v. Morgan*, 30 Wis. 2d 1 (1966). When the homestead credit was challenged in *Harvey*, however, the credit was

available only to individuals aged 65 and older whose household income was \$3,000 or less per year. In addition, the Wisconsin court of appeals, following *Harvey*, has held that the farmland preservation credit is a relief measure and not a tax statute. See *McManus v. Department of Revenue*, 155 Wis. 2d 450 (1990). When *McManus* was decided, the maximum *household* income allowed under that credit was \$38,429 for persons who first enter into a farmland preservation agreement in 1991, unless the person chose to take the minimum credit of 10% of property taxes accrued, regardless of income, up to a maximum credit of \$600.

The credit created in this bill, however, is available to individuals who, with their spouses, have household income of over \$150,000. Consequently, it may be more difficult to argue that this credit is a relief measure and for the credit to withstand a constitutional challenge; the reasoning that the Wisconsin Supreme Court employed in *Harvey* may no longer apply because of the expanded scope of the credit in this bill.

While I am not at all certain how a court would rule on a constitutional challenge to this amendment, should it become law, I believe that you should be aware of possible challenges to the amendment. If you have any further questions about this issue, please don't hesitate to contact me.

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